

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Aquatic Resources
Honolulu, Hawaii 96813

January 8, 2010

Board of Land
and Natural Resources
Honolulu, Hawaii

Approval for the Chairperson and/or Deputy Directors to enter into Agreements
with the USFWS to Conduct Investigative Assessments of Marine Injuries Associated
with the December 2009 Keawakapu Artificial Reef project

Submitted herewith for your consideration is a request to enter into Reimbursable Agreements between the Board of Land and Natural Resources and the U. S. Fish and Wildlife Service (FWS). The first Agreement (Phase I) would be conducted during January 2010 with non-federal funds provided by the Division of Aquatic Resources estimated to be about \$44,651.40. Another agreement (Phase II) would be conducted from March 1, 2010 through December 31, 2010 with non-federal funds provided by the Division of Aquatic Resources (DAR) in an amount to be determined based in-part on the results of Phase I of the investigative assessments. The objective of the agreements is to provide information and recommendations sufficient for the Department of Land and Natural Resources to be able to determine emergency mitigation actions necessary (if any) that ought to be undertaken to minimize any further injuries to the natural resources in the waters off of Keawakapu, Maui resulting from the December 2, 2009 incident (Phase I); and to provide an evaluation and recommendations for mitigation efforts to restore any impacted natural resource services affected by this incident (Phase II). The contracted federal agencies will also investigate and assess the natural resource damage and provide recommended mitigation efforts for any injured marine habitat. This investigation and assessment by the FWS and the National Oceanic and Atmospheric Administration (NOAA)) will assist DLNR to objectively investigate and address natural resource damages caused by activities conducted by Department staff in a timely manner and to minimize additional resource loss.

On December 2, 2009, a barge contracted by DLNR and operated by American Marine offloaded 1,400 8' x 4' concrete 'Z' modules to become part of the Keawakapu Artificial Reef site off of Kihei, Maui. A portion of these modules were later determined to have landed atop living coral making up at least one patch reef and possibly a portion of a nearby reef slope in waters approximately fifty to seventy-five feet in depth. The Department currently has limited information regarding the exact location, number, and condition of the modules lying atop live coral at the site and requires a detailed assessment of the injury in order to determine what emergency mitigation actions are necessary to prevent additional resource injuries.

RECOMMENDATION:

That the Board grant approval for the Chairperson and/or Deputy Directors to enter into Agreements with the USFWS to Conduct Investigative Assessments of Marine Injuries Associated with the December 2009 Keawakapu Artificial Reef project.

Respectfully submitted,



FRANCIS OISHI
DAVE GULKO

APPROVED FOR SUBMITTAL:



RUSSELL Y. TSUJI
Deputy Director to the Chairperson

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIEREN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONSERVATION
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND CAPITAL LANDS
CONSERVATION AND RESOURCES EMERGENT
EMERGENT
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAWAIALEA ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**Keawakapu Maui Artificial Reef Investigation
Reimbursable Agreement**

This is a Project between the U.S. Fish and Wildlife Service, through its Pacific Islands Fish and Wildlife office, Ecological Services in Honolulu, Hawai'i, hereinafter called FWS; and the State of Hawai'i Department of Land and Natural Resources, with offices in Honolulu, Hawai'i, hereinafter referred to as DLNR. The project will consist of a in-water field assessment of injuries caused to State of Hawai'i coral resources that resulted from the December 2, 2009 Keawakapu Artificial Reef Deployment incident.

The parties are jointly interested in assessing natural resource injury caused by a December 2, 2009 artificial reef deployment incident on the island of Maui, which resulted in damage to State of Hawai'i coral resources. After notification of all federal and State natural resource trustee agencies, the Chairperson of the State of Hawai'i Department of Land and Natural Resources decided that an external field assessment was necessary and requested assistance from both the FWS and NOAA to conduct such an assessment. The State of Hawai'i wishes to use the results of the FWS assessment to conduct emergency restoration activities and plan appropriate compensatory mitigation for lost ecological services, to the extent necessary.

1. **Service Authorities:** Pursuant to 31 USC 6505, Intergovernmental Cooperation Act, the USFWS is authorized to provide reimbursable specialized or technical services to State and local governments. The Government agency requesting specialized services must pay salaries and all other identifiable direct and indirect costs of performing such services. Program authority is under the Clean Water Act and the Coral Reef Conservation Act.
2. **Statement of Work:** FWS will work in collaboration with other federal partners to
 - a. Assess injured marine habitat areas associated with the December 2 deployment site and determine whether such injury is within or without of the pre-approved and designated Deployment Site area.
 - b. Map the outside perimeter(s) of discrete injured areas into defined polygons with associated GPS locations. Qualitatively describe the affected habitats and subhabitats within the polygons.
 - c. Document and produce estimates of the number of deployed concrete modules affecting the defined habitats and subhabitats within the damage polygons.
 - d. Assess adjacent areas for secondary or previously unknown injuries from the December 3 incident.

- e. Based on analysis of the field assessment, suggest recommended actions to mitigate natural resource injuries at the site. Recommendations will include defined resources at risk from each proposed action.
 - f. Assess DLNR artificial reef program protocols and recommend best practices to strengthen and improve protocols to avoid future damage to resources.
3. **Principal Contacts:** The technical contact assigned to this project from the FWS is Jeff Phillips, 808-792-9400; email jeff_phillips@fws.gov. The principal contact for DLNR is Laura H. Thielen, DLNR Chairperson, 808-587-0401; email laura.h.thielen@hawaii.gov.
4. **Term:** The investigative effort by the Parties will be conducted upon the issuance of the Purchase Number. This project is subject to renewal only by mutual written project of the parties.
5. **Funding:** DLNR will provide funds to FWS not to exceed Forty-four Thousand Six Hundred Fifty One and 40/100 Dollars (\$44,651.40), for the first phase of the Project. FWS will pass through Twenty One Thousand One Hundred One and 69/100 Dollars (\$21,101.69) to the National Oceanic and Atmospheric Administration (NOAA) to provide the same services listed above, and work in collaboration with FWS to produce a final report for the first phase of the Project. FWS will submit invoices to DLNR at the end of significant stages of work involved in the first phase of the Project. Invoices will be sent to the administrative contact identified in Article 8.
6. **Period of Performance:** The first phase of the Project is planned to begin immediately after issuance of the Purchase Number, with field work planned for early January 2010.
7. **Publications/Reports:** A final written report on the first phase will be submitted to DLNR by the end of January 2010. It is the intent of DLNR to use the report generated by this project to assist in decision-making regarding mitigating injury caused by this incident.
8. **Intellectual Property:** No intellectual property, other than the reports and the data are expected to be developed under this effort. The Parties intend that the data will be placed in the public domain as part of the final decision-making process for mitigating injury caused by the incident.
9. **Independent Entity:** For purposes of this Project and all services to be provided hereunder, each party shall be, and shall be deemed to be, an independent party and not an agent or employee of the other party. Each party shall have exclusive control over its employees in the performance of the work and the work product itself.

Neither party may use the name of the other in advertising or other form of publicity without the written permission of the other.

10. **Disclaimer:** The FWS and DLNR make no express or implied warranty as to the conditions of the field assessment, merchantability or fitness for a particular purpose of the field assessment, data, or resulting product incorporating data developed and exchanged under the Statement of Work. These provisions shall survive the termination of collaborative effort.
11. **Modification Procedures:** This agreement may be modified as necessary by mutual consent in writing by both parties at any time prior to the end of January 2010.
12. **Termination Procedures:** This agreement may be terminated by mutual consent in writing by both parties at any time prior to the end of January 2010.
13. **Miscellaneous Provisions:** Pursuant to the Anti-Deficiency Act, 31 U. S. C. §1341 (a)(1), nothing herein contained shall be construed as binding the FWS to expend in any one fiscal year any sum in excess of its appropriations or funding in excess of what it has received for the collaborative work outlined in the Statement of Work.
14. **Notices:** Any notice required to be given or which shall be given under this Project shall be in writing and delivered by first class mail to the parties as follows:

FWS:

Jeff Phillips – Technical
300 Ala Moana Blvd., Room 3-122
Honolulu, HI 96850
808-792-9400 phone
808-792-9581 fax


Karen McCurry – Administrative
300 Ala Moana Blvd., Room 3-122
Honolulu, HI 96850
808-792-9400 phone
808-792-9581 fax
Signatures:

DLNR:

Laura Thielen, Chairperson
1151 Punchbowl Street, Room 130
Honolulu, HI 96813
808-587-0401 phone
808-587-0390 fax

Katharine Hind – Administrative
1151 Punchbowl Street, room 330
Honolulu, HI 96813
808-587-0090 phone
808-587-0115 fax

By: _____ Date: _____
Name: Darla Smith, Team Leader
Region 1 Reimbursables/Contaminants
Region 1 Fish and Wildlife Office, Portland, Oregon

By:  _____ Date: 12/21/09
Name: Laura H. Thielen, Chairperson
Department of Land and Natural Resources
State of Hawaii